

REMARKS

Claims 1-20 and 24-30 are pending and under consideration, claims 21-23 were withdrawn from consideration, pursuant to a restriction requirement.

Rejection Under 35 U.S.C. § 102(b)

Claims 1, 3, 17 and 26-29 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by *Smith et al.* (U.S. Patent No. 5,105,769). Claims 1 and 26 have now been amended to clarify the structure of the invention. Applicant respectfully requests withdrawal of the rejection.

The present invention requires a container having a continuous sidewall. In fact, as the drawings make clear, the sidewall is continuous from the bottom to the top. *Smith et al.* does not fairly teach or suggest a container with a continuous sidewall.

Smith et al. is a container which prevents food from escaping the container when an animal is feeding out of the container. As such, the *Smith et al.* reference teaches an inwardly-extending portion and an outwardly extending portion (see column 4 line 50-53, lines 60-63). Thus, the container is configured to provide a convergent-divergent funnel to prevent an animal, when making a sweeping motion with its head, from pushing feed within the container out of the container (see column 5, lines 7-12). Accordingly, the sidewall of *Smith et al.* is not continuous due to the convergent-divergent funnel. Therefore, the *Smith et al.* reference does not anticipate the present invention.

Rejection Under 35 U.S.C. § 103(a)

Claims 1, 3, 13, 16, 24 and 25 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Manca* (U.S. Patent No. D381,561) in view of *Smith et al.*. Claims 2, 4-12, 14

and 15 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Manca* in view of *Smith et al.* in further view of *Chen* (U.S. Patent No. 5, 549,210). Claims 18, 19, 26 and 30 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Smith et al.* in view of *Valyi* (U.S. Patent No. 5,939,153). Claims 1 and 26 have been amended to further clarify the structure of the invention. Applicant respectfully traverses the rejections and requests withdrawal of same.

The primary reference of *Manca* relates to a design for a clay pot. The *Manca* reference is thus directed toward a specific design to hold spices. In this design, the neck has an opening which is more narrow than the rest of the body of the pot. Accordingly, the opening of the *Manca* reference is not adaptable for a user to easily scoop or dip contents out of the pot.

As previously stated, *Smith et al.* teaches a convergent-divergent funnel. Additionally, taken along any midpoint, *Smith et al.* is asymmetrical in cross section and profile due to the different sized sides of the tray (see column 5, lines 54-61).

In contrast, the present invention is directed to a blow-molded plastic container with bulging continuous sidewalls. Molded containers, presently known, do not typically have bulging continuous sidewalls since these sidewalls are difficult to extract in an axial direction from the mold because the bulging sides engage against mold portions that correspond to the upper and lower portions of the container body (see specification page 1, lines 10-12). Applicant has determined that because of the blow-molded bowl, this type of container of the present invention can be extracted easily (see specification page 5). *Smith et al.*, however, does not disclose to one skilled in the art a blow molded process for its container.

Additionally, the blow- molded bowl of the present invention is rigidly configured to withstand hot-fill and retort applications. Other known hot-fill and retort containers are configured to be deformable or include expansion members to accommodate volumetric changes

of the contents during the hot-fill or retort applications. Applicant has determined that because of the blow-molded bowl of the present invention, a rigid container without expansion members is achieved.

Further, the container has “squat proportions” for the user to easily scoop or dip contents out of the container (see specification page 5, lines 14-16). As such, the longest sectional diameter of the bowl is larger than the height of the bowl. The longest diameter is also below the midpoint height of the container to provide the squat proportions. Further, the opening is substantially the same size as the diameter. Accordingly, the rate of gradient change of the continuous sidewall above the longest sectional diameter is less than that below the longest sectional diameter.

Applicant respectfully submits that combining the cited references fails to establish a prima facie case of obviousness. To establish a prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art See In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). Further, not only must the Examiner find each element of the claimed invention in the prior art, the Examiner must show upon “rigorous application” the proper motivation or suggestion to combine wherein the showing “must be clear and particular” See In re Dembiczak, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 17 (Fed. Cir. 1999).

The Applicant respectfully submits that the Examiner’s reference by reference, limitation by limitation analysis fails to demonstrate how the *Manca* reference in combination with the other references teach or suggest their combination to yield the claimed invention wherein the claimed invention has a blow molded bowl with a continuous sidewall. Further, the cited references fail to teach or suggest their combination to yield the claimed invention wherein the claimed invention has a sidewall diameter larger than the height of the bowl. Further, the cited references fail to teach an opening having nearly the same size as the diameter in order for a user

to scoop or dip contents out of the bowl. In contrast, the primary reference is never concerned with these issues since the primary reference is designed for storage instead of serving, and, accordingly, does not discuss or enable the same. Additionally, the secondary reference is designed to limit the removal of stored items via the convergent-divergent funnel.

The cited references are oriented to different problems and propose different solutions. Additionally, nothing in the primary reference suggests that it can be combined with other references to obtain the claimed invention. In particular, the cited references do not suggest or teach a blow molded bowl with continuous sidewall which can withstand a hot-fill or retort application. Accordingly, since the problems identified are different from the problem solved by the claimed invention, the claimed invention is not obvious. Further, the cited references do not suggest or teach a container having the squat proportions of the present invention.

In order to meet an obviousness requirement, the requirement has to meet some suggestion that the cited references have similar features or structures. To suggest otherwise pertains to an impermissible hindsight reconstruction. The standard, rather, is whether the reference taken as a whole would have suggested the applicants' invention to one of ordinary skill in the arts at the time the invention was made.

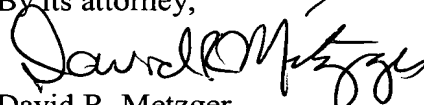
Applicant respectfully submits that since amended claims 1 and 26 patentable, all dependent claims therefrom are also patentable. Applicant further submits that new claims 31 and 32 represent patentable subject matter.

CONCLUSION

The Applicant respectfully requests withdrawal of the rejection and believes that the claims as presented represent allowable subject matter. However, if the Examiner desires, the Applicant's attorney is ready for a telephone interview to expedite prosecution. As always, the Examiner is free to call the undersigned at 312-876 2578.

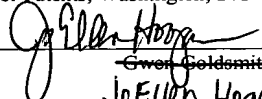
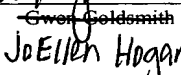
Respectfully submitted,

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8/30/02 Date 

Gwen Goldsmith
Jo Ellen Hogan



Attorney Docket No. 9798495-0017

U.S. Serial No. 09/543,949

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. Patent Application of:)	
G. Manderfield, Jr.)	
)	
Serial No.: 09/09/543,949)	Examiner: N. Eloshway
)	
Filed: April 6, 2000)	Group Art Unit: 3727
)	
For: MOLDABLE CONTAINER)	
WITH BULGING SIDES AND)	
FEET)	

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In The Claims

Please amend claims 1 and 26 as follows:

1. (Twice Amended) A plastic molded container comprising:

a blow-molded bowl comprising an upper rim, a bottom and a sidewall extending between the upper rim and the bottom, the sidewall in cross sectional profile being a smooth continuous curve between the upper rim and the bottom, the sidewall extending radially outwardly before extending radially inwardly as the sidewall extends downward between the upper rim and the bottom to provide a bulging sidewall.

26. (Once Amended) A plastic molded container comprising:

a bowl comprising an upper rim, a bottom and a sidewall extending between the upper rim and the bottom, the sidewall in cross sectional profile being a smooth continuous curve between the upper rim and the bottom, the sidewall extending radially outwardly before extending radially inwardly as the sidewall extends downward between the upper rim and the bottom to provide a bulging sidewall, the sidewall further having a diameter larger than the height of the bowl, the height being the distance between the bottom and the upper rim.

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